

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



INVITATION FOR BIDS

Solicitation Number: DCAM-17-NC-0021

On-Call Third Party Inspectors for Conveyance Machines

Date Issued: November 17, 2016

Bid Due Date: December 9, 2016 by 11:00 a.m.

Delivery of Bids: Department of General Services
Contracts and Procurement Division | 8th Floor
Attention: George G. Lewis, CPPO
Interim Associate Director/Contracting Officer
Frank D. Reeves Center
2000 14th Street NW | 8th Floor
Washington, DC 20009

Bid Opening: December 9, 2016 at 11:15 p.m.
DGS 8th Floor Potomac Conference Room located
at 2000 14th St., NW, Washington, DC

Contact: Keith Giles
Contract Specialist
Contracts & Procurement Division
2000 - 14th Street, NW, 8th Floor
Washington, DC 20009
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SECTION A EXECUTIVE SUMMARY

The District of Columbia Department of General Services (DGS), Contracts and Procurement Division, is issuing this Invitation for Bids (IFB) to engage one Contractor to perform third party inspections, on a periodic and “on-call” basis, on all Conveyance Machines (as defined below) located at those DGS government owned facilities identified on **Attachment A** attached hereto (the “Facilities”). For purpose of this solicitation, the term “Conveyance Machines” refers to the approximate one hundred and fifty (150) motorized conveyance systems or machines that transport, lift or otherwise convey people and/or materials at the Facilities including, without limitation, elevators, material lifts, escalators and wheel chair lifts. Please see Section B.1 below for definitions of capitalized terms.

The intent of this contract is to enable DGS to have its Conveyance Machines routinely inspected by qualified third party inspectors to ensure their safety and proper operations, detect actual/potential deficiencies, and to inspect the adequacy of repairs made to correct such deficiencies.

The awarded contractor (“Contractor”) will be required to provide Services (as defined below) to all Conveyance Machines currently at the Facilities, and any new Conveyance Machines installed and/or acquired by the Department at such Facilities during the term of this contract.

The Department intends to award one (1) contract, and the award will be made to the responsive and responsible bidder offering the lowest price for these services specified herein.

The goal of this procurement is to establish a contract for the Services (as defined below) in accordance with 27 DCMR Chapter 47, Section 4715. The contract will provide the Department the vehicle to procure such services.

A.1 CONTRACT TYPE:

A.1.1 The Contract(s) awarded pursuant to this IFB will be an Indefinite Delivery Indefinite Quantity (IDIQ) type of Contract based on firm fixed hourly labor rates. The Department will order and the Contractor shall deliver at least the minimum of \$250.00 in staffing services and the Department may order a maximum of \$950,000.00 in staffing services during the Contract period.

A.2 FORM OF CONTRACT:

A.2.1 Contract(s) resulting from this IFB will typically include the following:

- (a) The Award/Signature Page (**Attachment H**)
- (b) Acknowledgement of Amendments (See Award/Signature Page Section 13)

- (c) The IFB pages 2 – 46
- (d) The Contractor's Submittals The Contractor's Bid Form (**Attachment A**)
Applicable exhibits provided as attachments or incorporate by reference including, the Department of General Services Standard Contract Provisions for Non-construction Services (**Attachment I**), the US Department of Labor Wage Service Contract Rates applicable at date of award (**Attachment G**) and the District Living Wage Act (**Attachment E**).

A.3 TERM OF THE CONTRACT:

A.3.1 Base Term: The base term of the firm fixed unit price contract will be for one (1) year from date of award through one year thereafter.

A.3.2 Option Year: The Department shall have the unilateral right to extend the term of this Agreement for two (2) terms of one (1) year or fractions thereof; provided that the Department shall give the Contractor preliminary written notice of intent to exercise the option thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. The Contractor may waive the thirty (30) day noticed requirement by providing a written waiver to the Department prior to the expiration of the Contract.

A.3.3 Option Years Pricing: In the event the Department exercises its option to extend the period of the Contract, the hourly rates applicable to such Option Year are set forth in **Attachment A**.

A.4 PRICING:

The Department is seeking pricing based on firm fixed hourly rates in accordance with the Statement of Work (SOW) provided in Section B. The Bidders pricing offers, shall be "all inclusive" and sufficient to cover all internal labor, supervision, management, materials, supplies, recordkeeping, reporting and other services including, overhead and profit.

The Bidders shall complete the Bid Form **Attachment A** as prescribed above. The quoted pricing must remain in effect for the entire term of the Contract. The Contractor's pricing shall be as low as, or lower than those charged to the Contractor's most favored customer for comparable services under similar terms and conditions, in addition to any discounts for prompt payment.

A.5 PROCUREMENT SCHEDULE:

The “Procurement Schedule” for this procurement is as outlined below:

- | | |
|--------------------------------------|--------------------------------|
| • Issuance of IFB | November 17, 2016 |
| • Last Day for Questions | November 25, 2016 |
| • Due Date & Time for Bid submission | December 9, 2016 at 11:00a.m. |
| • Bid Opening | December 9, 2016 at 11:15 a.m. |

IMPORTANT NOTICE: Contracts & Procurement will notify bidders of any changes, additions and or deletions to the specifications and or responses to questions by addenda posted on the Department of General Services, Contracts & Procurement website. It is the potential Bidder’s responsibility to frequently visit the Procurement’s website at <http://dgs.dc.gov/page/dgs-solicitations> to obtain addenda(s) once they have received a copy or downloaded a copy of the solicitation.

A.6 ATTACHMENTS:

The following documents are attached to the IFB:

Attachment A	Bid Form
Attachment B	Bidder/Offeror Certification
Attachment C	Tax Affidavit
Attachment D	Subcontracting Plan Form
Attachment E	2016 Living Wage Act Notice and Fact Sheet
Attachment F	First Source Employment Agreement Form
Attachment G	Service Contract Act Wage Determination
Attachment H	Award/Signature Page
Attachment I	Standard Contract Provisions
Attachment J	References/Qualifications
Attachment K	EEO Statement

SECTION B SCOPE OF WORK

B.1 DEFINITIONS:

For purposes of this solicitation, the following terms shall have the meanings set forth below:

“Annual Inspection” has the meaning given to it in Section B.3.1.1

“Contracting Officer (CO)” shall be a business communications liaison between the Department and a Contractor. He or she ensures that their goals are mutually beneficial. The CO is an employee who is responsible for recommending, authorizing, or denying actions and expenditures for both standard delivery orders and task orders, and those that fall outside of the normal business practices of its supporting Contractors and Sub Contractors.

“Conveyance Machines” has the meaning given to it in the Executive Summary.

“COTR” means the Contracting Officer’s Technical Representative.

“DCRA Requirements” means any codes, ordinances, rules, regulations, standards, requirement and specifications issued or otherwise mandated by the D.C. Department of Consumer and Regulatory Affairs with respect to the installation, operation, inspection and repair of elevators (or any other Conveyance Machine).

“Facilities” has the meaning given to it in the Executive Summary.

“Five Year Inspection” has the meaning given to it in Section B.3.1.2

“Industry Standard” means an Industry-developed quality of standards (including, without limitation, any standards, policies, recommendations and guidelines established by the National Association of Elevator Safety Authorities and its Qualified Elevator Inspector certification program) that are established requirements with respect to the performance, inspection and safety of Conveyance Machines.

“On-Call Inspection” has the meaning given to it in Section B.3.2.

“On-Call Inspection Repairs” has the meaning given to it in Section B.3.2.

“Periodic Inspection Repairs” has the meaning given to it in Section B.3.1.3.

“Post-Repair Inspection” has the meaning given to it in Section B.3.3.

“Services” means Annual Inspections, Five Year Inspections, On-Call Inspections, and Post-Repair Inspections to be performed by the Contractor hereunder.

B.2 Project Summary:

The Department is seeking a qualified Contractor that specializes in performing inspections, on both a periodic and “on-call” basis, on the Conveyance Machines located at the Facilities, as contemplated herein. In general, the selected Contractor(s) shall be required to provide all supervision, materials, tools, supplies, equipment, transportation and labor necessary to perform the required services twenty-four (24) hours a day, seven (7) days a week. Please see Section B.1 above for definitions of capitalized terms.

The Contractor shall conduct all activities and perform all work consistent with: (i) the applicable specifications and requirements recommended by the original equipment manufacturers (O.E.M); (ii) Industry Standards; (iii) DCRA Requirements; and (iv) in compliance with applicable federal and local laws, statutes, codes, ordinances, rules and regulations (whether existing now or subsequently passed, enacted, adopted or amended, at any time, during the term of an award made hereunder, collectively “Applicable Laws”).

All Services herein shall be performed by qualified and elevator industry certified inspectors, trained to test and inspect the Conveyance Machine on which they work.

B.3 Scope of Work:

The selected Contractor shall be required to perform Annual Inspections, Five Year Inspections, On-Call Inspections and Post-Repair Inspections (as each term is defined below) to the Conveyance Machines in the manner set forth below:

B.3.1 Periodic Inspections.

B.3.1.1 Annual Inspection: The Contractor shall perform annual inspections (“Annual Inspections”) of the Conveyance Machines which shall include performing: (i) life safety inspections; and (ii) and such other inspections that are necessary to ensure that each Conveyance Machine meets or exceeds Industry Standards and the DCRA Requirements applicable to licensing. Upon completion of the Annual Inspections, the Contractor shall provide annual inspection tags as required by the District’s Department of Consumer and Regulatory Affairs (“DCRA”) and, if applicable, the National Association of Elevator Safety Authorities. In addition, if after an Annual Inspection (or a Post-Repair Inspection of Periodic Repairs found during an Annual Inspection as contemplated by Section B.3.3 below) the Contractor has determined that an inspected Conveyance Machine then meets or exceeds the DCRA Requirements applicable to licensing, the Contractor shall provide DGS with all required paperwork (including a DCRA Third Party Elevator Inspection form) within twenty-four (24) hours of such inspection so that DGS may obtain the necessary license from DCRA.

B.3.1.2 Five Year Inspection: DGS requires that every five (5) years, all required Conveyance Machines must undergo a five (5) year load inspection and testing (a “Five Year Inspection”). Following an award made hereunder, the COTR shall (i) inform the Contractor which Conveyance Machines are required to undergo a Five Year Inspection during the contract period, and (ii) establish a schedule of required Five Year Inspections. The Contractor shall be required to conduct such Five Year Inspections with respect to the applicable Conveyance Machines consistent with the COTR’s established schedule.

B.3.1.3. Report: Upon completing its Annual Inspections and Five Year Inspections, the Contractor shall provide a checklist of inspections performed, and a written report to the COTR within twenty-four (24) hours following the completion of such inspections. The report shall detail parts and related components inspected or tested, deficiencies or potential concerns, a list of repairs recommended (“Periodic Inspection Repairs”) and estimated repair costs, and state the condition of such Conveyance Machine.

B.3.1.4. Inspection Schedule: Within fifteen (15) days of award, the Contractor will submit to the COTR, for approval, its proposed schedule for conducting Annual Inspections with respect to all of the Conveyance Machines; provided however, that all Annual Inspections must be completed with respect to all Conveyance Machines no later than April 30, 2017. The COTR will have the right to demand changes to the schedule in its sole discretion.

B.3.2 On-Call Inspections: In the event that the COTR notifies the Contractor that a Conveyance Machine is defective, the Contractor(s) shall perform an inspection (an “On-Call Inspection”) of such Conveyance Machine within twenty-four (24) hours of such notification. Upon completing an On-Call Inspection, the Contractor shall provide the COTR a written report detailing all existing deficiencies, and listing all repairs recommended (“On-Call Inspection Repairs”) and the estimated repair costs.

B.3.3 Post-Repair Inspections: After the COTR has arranged for all Periodic Inspection Repairs or On-Call Inspection Repairs, as the case may be, to be made to a Conveyance Machine, the Contractor(s) shall promptly perform an additional inspection of such Conveyance Machine to confirm that (i) all necessary repairs were properly made consistent with Industry Standards, and (ii) the Conveyance Machine is now fully operationally and safe for usage (“Post-Repair Inspections”). Alternatively, if during such Post-Repair Inspection, the Contractor determines that the repairs were not properly done (or the Conveyance Machine still remains defective in any way), the Contractor(s) shall again identify to the COTR in a written report what remaining deficiencies exist, along with the suggested repairs and estimated repair costs. The Contractor shall continue to perform such additional rounds of inspections and deliver such additional post-repair written reports to the COTR, until the Contractor has determined the Conveyance Machine to be fully operationally and safe for usage (or the COTR specifically instructs the Contractor to stop performing such inspection services).

B.3.4 DCRA Inspection Forms: After the completion of any Annual Inspections, Five Year Inspections, On-Call Inspections, and Post-Repair Inspections, the Contractor shall complete a DCRA Third Party Elevator Inspection form and deliver it to DGS within twenty-four hours of such inspection.

B.3.4 Response Times: The Contractor shall (i) respond to all requests for On-Call Inspections and Post-Repair Inspections by telephone within a one (1) hour period, and (ii) arrive at the site and perform such inspections within twenty-four (24) hours from an initial request (unless such request is deemed to be an emergency by DGS, in which case the Contractor must arrive on site and perform the inspection within two (2) hours from the initial request). The Contractor shall provide the Department with a toll-free number available 24 hours per day, 7 days per week, 365 days per year where the inspection requests will be reported.

B.4 TECHNICAL REQUIREMENTS

In addition to complying with the requirements outlined elsewhere in this IFB, the Contractor shall at a minimum:

- A. Carry all necessary insurances required by DGS under this award;
- B. Supply a sufficient number of vehicles/trucks, equipment, tools, labor and supplies needed to perform all of the Services required of it in an expedient manner;
- C. Completely familiarize itself with its proposal/quote documents, and the location of all of the Facilities;

B.5 QUALIFICATIONS.

Each bidder shall submit evidence with its proposal satisfactory to DGS that such bidder can fulfill the requirements of the contract. Such evidence must include the following, but need not be limited to:

- A. Proof that bidder has had at least five (5) years of experience with performing Annual Inspections, Five Year Inspections, On-Call Inspections, and Post-Repair Inspections on Conveyance Machines (including Conveyance Machines manufactured by Otis, Thyssen Krupp, and Schindler, as well as other configured and constructed elevators); Bidder must complete and deliver with its proposal, Reference Form(s), in the form of **Attachment J**, which contains (i) a list of customers (who own or manage large building/facilities), for which a bidder has performed work of similar scope to this scope of work, and (ii) the names, telephone numbers of individuals working for those customers, who DGS may contact to verify the bidder's performance, and (iii) a description of services that were provided by such bidder;

- B. Proof that the bidder's proposed inspectors who, if awarded a contract hereunder, will provide Services hereunder are qualified and have been duly certified through the Qualified Elevator Inspector certification program; and
- C. Proof that a bidder is duly licensed with the D.C. Department of Consumer and Regulatory Affairs as an Third Party Elevator Inspector.

DGS may make such investigations as it deems necessary to determine the qualifications of any bidder and its ability to perform the Services, and all bidders shall promptly furnish to DGS all such evidence and information for this purpose as DGS may request. In addition, DGS reserves the right to reject any bid if the evidence submitted by, or the investigation of, the bidder fails to satisfy DGS that such bidder is properly qualified, competent and capable, in all respects, to perform the Services in accordance therewith. No award shall be made to any bidder whose submitted background information, when investigated and verified by DGS, raises significant questions as to its ability to successfully complete the Services.

B.6 Work Site and Safety

B.6.1 The Contractor shall provide all safeguards and suitable barricades to protect public and adjacent property.

B.6.2 The Contractor shall repair or remove unsafe items and clean unsanitary areas.

B.6.3 The Contractor shall remove abandoned items and any items serving no useful purpose, such as abandoned parts, wiring and electrical devices.

B.6.4 The Contractor shall remove unsuitable or extraneous materials such as abandoned equipment, and debris.

B.6.5 The Contractor shall clean surfaces and remove surface finishes as needed to install new work and finishes.

B.6.6 The Contractor shall design and provide all necessary temporary terminations and redirects of utility services (electrical power) to the facility to the satisfaction of the COTR.

B.6.7 The Contractor's employees shall be subject to background checks prior to them performing any Services. If there is suspicion of drug use (erratic or suspicious behavior) by an employee, the Department reserves the right to request, at any time, that such individual be removed from project.

B.6.8 The Contractor shall not disturb portions of buildings outside of those areas in which the Services are required.

B.6.9 The Contractor shall keep driveways, loading areas, and entrances serving premises clear and available to District employees, the public, and emergency vehicles at all times. The Contractor shall not use these areas for parking or storage of materials, and schedule deliveries to minimize use of driveways and entrances.

B.6.10 The Contractor shall schedule deliveries and provide at least twelve hours advanced notification to minimize space and time requirements for storage of materials and equipment on-site.

B.6.11 The Department may appoint other entities or representatives to manage, on its behalf, the day-to-day activities for the execution of the Project.

B.7 **Clean-Up:**

All work areas shall be left in broom swept condition after completing work. The Contractor shall ensure that no refuse, rubbish, empty cans, scrap materials, rags, and other discarded materials and debris shall be left at the work area or buried or burned on the job site. Such items shall be removed from the site by the Contractor and properly disposed of in a licensed landfill (or such other location permissible by Applicable Laws). Upon completion of the work but before final acceptance, the Contractor shall remove all surplus material, false work or temporary structures including foundations. The Contractor shall be responsible for all costs associated with the immediate removal of all packing materials and cartons and legal disposal of such material.

B.7.1 The Contractor shall take every precaution to maintain adequate protection of all their work from damage, and shall protect both the public and the Department's property from any harm or damage arising in any way from the performance of Services by the Contractor.

B.7.2 Work sites shall be appropriately designated by any necessary signage/barriers including signs, caution tape, etc. as required to protect areas.

B.7.3 The Contractor shall ensure that all work areas shall be maintained in a neat, orderly and workmanlike appearance at all times.

B.7.4 The Contractor shall dispose of daily all hazardous waste in accordance with all Applicable Laws. At no time shall the use of dumpsters or trash receptacles be allowed at any location. There shall be no dumping of materials in or around District of Columbia buildings or facilities.

B.8 Regulatory Compliance

The Contractor and its employees shall obtain and maintain, at all times, all applicable permits, licenses, authorizations and/or certificates needed to perform the Services as required by Applicable Laws. A copy of these documents must be provided with the Bid Documents and to the COTR upon request.

B.9 Industry Specific Standards

B.9.1 The Contractor shall provide all Services in a manner consistent with Industry Standards, if any, and in accordance with Applicable Laws.

B.9.2 The Contractor shall take all the necessary precautions to prevent fire hazards and spontaneous combustions.

B.10 Safety Standards

The Contractor shall ensure all personnel safety, including Sub Contractors and equipment, comply with the requirements and standards of the Occupational Safety and Health Act, as amended from time to time (OSHA). Appropriate personal protective equipment shall be provided to and used by all employees while performing work. The Contractor shall take every precaution at all times for the protection of persons and their property that may come on the work site or be affected by the Contractor's operation and give immediate notice to the COTR, or the Department's designee, of any condition deemed hazardous to any persons.

B.11 Reporting- Work Ticket

By 10:00 am on each Monday, the Contractor shall deliver to COTR a weekly report, formatted on a Microsoft excel spreadsheet, summarizing all inspections that took place during the preceding week. Such weekly report shall include the following: name of each Facility (its address, ward number, type of building); the Conveyance Machine (and its identification number, certificate number, certificate issuance date, license number, and certification expiration date); the type of Conveyance Machine (hydro, traction, MRL, etc.); the inspection date; the deficiency found; and the Conveyance Machine's then status. The Contractor shall submit such report, with updates, to the Department through its "SalesForce" online work management system including summaries, notes, pictures, and any other information requested by the Department.

B.12 Service Hours:

The Contractor shall perform all Services during the hours of 6:00 am – 8:00 pm local time (adjustments will be made for Daylight Savings Time), Monday through Friday, excluding District holidays, unless otherwise approved by the Department. If the Contractor needs to work on a weekend or District holiday in order to maintain the required schedule, the Contractor shall obtain the Department's approval. There may be situations that require the Contractor to work other than the hours specific herein. In those cases, the Contractor shall advise the Department to reschedule the work to minimize disruption.

SECTION C ECONOMIC INCLUSION

C.1 PREFERENCE FOR SMALL, LOCAL AND DISADVANTAGED BUSINESS ENTERPRISES:

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2014”, D.C. Official Code § 2-218.01 et seq., as amended (“Act”, as used in this section), the District shall apply preferences in evaluating bids from businesses that are certified by the Department of Small and Local Business Development (DSLBD) pursuant to Part D of the Act.

C.1.1 Application of Preferences:

Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Bidders that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, or being a local business enterprise with its principal office located in an enterprise zone. (A copy of the certification acknowledgment letter must be submitted with the Bidder’s Bid.) A percentage reduction in price shall be granted to prime contractors as follows:

- (a) Three (3) percent reduction for a small business enterprise (SBE);
- (b) Five (5) percent for a resident-owned business (RBO);
- (c) Ten (10) percent for a longtime resident business (LRB);
- (d) Two (2) percent for a local business enterprise (LBE);
- (e) Two (2) percent for a local business enterprise with its principal office located in an enterprise zone (DZE);
- (f) Two (2) percent for a disadvantaged business enterprise (DBE);
- (g) Two (2) percent for veteran-owned business (VOB);
- (h) Two (2) percent for local manufacturing business enterprise (LMBE)

C.1.2 Maximum Preference Points Awarded:

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise (CBE) is entitled under the Act is twelve per cent (12%) for bids submitted in response to this IFB. There will be no preference awarded for subcontracting by the prime Contractor with CBEs.

C.1.3 Preferences for Certified Joint Ventures:

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a (h).

C.1.4 Verification of Bidder's Certification as a Certified Business Enterprise:

- (a) Any Bidder seeking to receive preferences on this solicitation must be certified at the time of submission of its bid. The CO will verify the bidder's certification with DSLBD, and the bidder should not submit with its bid any additional documentation regarding its certification as a certified business enterprise.
- (b) Any vendor seeking certification in order to receive preferences under this solicitation should contact the:
Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 850N
Washington DC 20001
- (c) All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

C.2 LSDBE UTILIZATION:

C.2.1 Mandatory Subcontracting Requirements

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 50% of the dollar volume of the Contract shall be subcontracted to qualified small business enterprises (SBEs).
- (b) If there are insufficient SBEs to completely fulfill the requirement of paragraph (a)(1), then the subcontracting may be satisfied by subcontracting 50% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (c) A prime Contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections C.2.1 (a) and C.2.1 (b) of this clause.
- (d) Except as provided in C.2.1 (e) and C.2.1 (f), a prime Contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime Contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- (e) A prime Contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime Contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime Contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the Contract is \$1 million or less.
- (h) A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/> DC/DSLBD, click on “Doing Business in the District”, click on “Find CBE Certified Contractors.”

C.2.2 Subcontracting Plan

C.2.2.1 If the prime Contractor is required by law to subcontract under this Contract, it must subcontract at least 50% of the dollar volume of this Contract in accordance with the provisions of section C.2.1 of this clause. The plan shall be submitted as part of the bid and may only be amended with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

- (a) The name and address of each subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each subcontractor; and
- (d) The price that the prime Contractor will pay each subcontractor.

C.2.3 Copies of Subcontracts

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, PM, District of Columbia Auditor and the Director of DSLBD.

C.2.4 Subcontracting Plan Compliance Reporting.

C.2.4.1 If the Contractor has a subcontracting plan required by law for this Contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (e) The price that the prime Contractor will pay each subcontractor under the subcontract;
- (f) A description of the goods procured or the services subcontracted for;
- (g) The amount paid by the prime Contractor under the subcontract; and
- (h) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

C.2.4.2 If the fully executed subcontract is not provided with the quarterly report, the prime Contractor will not receive credit toward its subcontracting requirements for that subcontract.

C.2.5 Annual Meetings

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, PM, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

C.2.6 Notices

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the Contract and when the Contract is completed.

C.2.7 Enforcement and Penalties for Breach of Subcontracting Plan

C.2.7.1 Contractor shall be deemed to have breached a subcontracting plan required by law, if the Contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

C.2.7.2 A Contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a Contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

C.2.7.3 If the CO determines the Contractor's failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract under the default provisions in clause 8 of the SCP, Default.

C.3 RESIDENCY HIRING REQUIREMENTS FOR CONTRACTORS & SUBCONTRACTORS:

C.3.1 At least fifty-one percent (51%) of the Bidder's team and every sub-consultant's employees hired after the Bidder enters into a Contract with the Department, or after such sub-consultant enters into a Contract with the Bidder, to provide the required goods or services, shall be residents of the District of Columbia.

C.3.2 Upon execution of the Contract, the Bidder and all of its member firms, if any, and each of its subcontractors and sub-consultants shall submit to the Department a list of current employees that will be assigned to work under the Contract, the date that they were hired and whether or not they live in the District of Columbia.

C.3.3 The Bidder shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder. The Bidder and all member firms, subcontractors, tier subcontractors, sub-consultants, and suppliers with contracts in the amount of \$300,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement Attachment G with the D.C. Department of Employment Services ("DOES") upon execution of the Contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work; (iii) make best efforts to hire at least 51% District residents for all new jobs created under the Contract; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10th of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in a program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

SECTION D COMPLIANCE REQUIREMENTS

D.1 CONFORMANCE WITH LAWS:

It shall be the responsibility of the Contractor to perform the Agreement in conformance with the Department's Procurement Regulations (27 DCMR § 4700 et seq.) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Department's procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

D.2 LICENSING, ACCREDITATION AND REGISTRATION:

The Contractor and all of its subcontractors shall comply with all applicable District of Columbia, state and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Contract.

D.3 STANDARD CONTRACT PROVISIONS:

The Standard Contract Provisions for use with Specifications for District of Columbia Government Non Construction Projects are hereby incorporated into this IFB as **Attachment I**.

D.4 LIVING WAGE ACT:

The Living Wage Act is applicable to this Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by that Act **Attachment E**.

D.5 SERVICE CONTRACT ACT:

The Service Contract Act is applicable to the resulting Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by this Act. Applicable wage determination rates are attached hereto as **Attachment G**.

SECTION E EVALUATION AND AWARD CRITERIA

E.1 CONTRACT AWARD:

- E.1.1** This procurement is being conducted in accordance with the provisions of §4720 of the Department's Procurement Regulations (27 DCMR, Chapter 47).
- E.1.2** The District reserves the right to accept/reject bids resulting from this solicitation. The Chief Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.
- E.1.3** The District will make an award to the responsive and responsible Offeror with the lowest Grand Total price. The Grand Total price will be determined based on the sum of the Base Year, Option Year One and Option Year Two rates listed in Attachment A.

SECTION F BID ORGANIZATION AND SUBMISSION

This section outlines specific information necessary for the proper organization and manner in which Bidder's bid submissions shall be proffered. References are made to other sections in this IFB for further explanation.

F.1 BID IDENTIFICATION:

Bids shall be proffered in an original and two (2) hard copies placed in a sealed envelope conspicuously marked: ***DCAM-17-NC-0021 – On-Call Third Party Inspectors for Conveyance Machines***

F.2 DELIVERY OR MAILING OF BIDS:

Submissions shall be **hand** delivered or mailed to:

Department of General Services
Contracts & Procurement Division
Attn: George G. Lewis, CPPO Interim Associate Director/Contracting Officer
2000 14th Street, NW | 8th Floor
Washington, D.C. 20009
Phone: (202) 727-2800

F.3 DATE AND TIME FOR RECEIVING BIDS:

Submissions shall be received no later than **11:00a.m. EST on December 9, 2016** The Bidder assumes the sole responsibility for timely delivery of its submission, regardless of the method of delivery.

F.4 BID OPENING:

A public Bid Opening will be held at **11:15 a.m. on Friday, December 9, 2016** at the Reeves Center 8th Floor Potomac Conference Room located at 2000 14th St., NW, Washington, DC.

F.5 ATTACHMENTS:

The Bidder shall complete and include the following attachments with their bids in the order denoted below:

- (a) Signed by the Contractor-Award/Signature Page (**Attachment H**)
- (b) Acknowledgement of Amendments (Award/Signature Page Section 13)
- (c) The IFB pages **2 - 46**
- (d) Bid Form - (**Attachment A**);

- (e) Bidder-Offeror Certification Form – Each Bidder shall submit a Bidder-Offeror Certification Form (**Attachment B**);
- (f) Tax Affidavit - Each Bidder shall submit a completed tax affidavit (**Attachment C**). In order to be eligible for this procurement, Bidders must be in full compliance with their tax obligations to the District of Columbia government;
- (g) Subcontracting Plan Form - Each Bidder shall submit a Subcontracting Plan, if applicable, substantially in the form of (**Attachment D**);
- (h) First Source Employment - Each Bidder shall submit the First Source Employment Agreement in the form of (**Attachment F**); and
- (i) LSDBE Certification Letter
- (j) EEO Statement.

SECTION G BIDDING PROCEDURES & PROTESTS

G.1 CONTACT PERSON:

The contact person for this IFB is:

Keith R. Giles
Department of General Services
Contracts and Procurement Division
2000 14th Street, NW | 8th Floor
Washington, DC 20009
Phone: (202) 671-2445
Email: keith.giles@dc.gov

G.2 RESERVED:

G.3 EXPLANATIONS TO PROSPECTIVE BIDDERS:

Each Bidder shall carefully examine this IFB and any and all amendments, addenda, or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a bid. Should a Bidder find discrepancies or ambiguities in, or omissions from, the IFB and amendments, addenda or revisions, or otherwise desire an explanation or interpretation of the IFB, any amendments, addenda, or revisions, it must submit an appeal for interpretation or correction in writing. Any information given to a Bidder concerning the solicitation will be furnished promptly to all other Bidders as an amendment or addendum to this IFB if in the sole discretion of the Department that information is necessary in proffering bids or if the lack of it would be prejudicial to any other prospective Bidders. Oral explanations or instructions given before the award of the Contract will not be binding.

Requests shall be directed to Keith Giles at the email address listed in *Section G.1 no later Friday, November 25, 2016*. The person making the appeal shall be responsible for prompt delivery.

G.4 PROTESTS:

Any Proposer who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be

filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350 N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the Contracting Officer listed in this document.

This section is intended to summarize the bid protest procedures and is for the convenience of the Bidders only. To the extent any provision of this section is inconsistent with the Procurement Regulations; the more stringent provisions shall prevail.

G.5 RETENTION OF SUBMISSIONS:

All submissions will be retained by the Department and therefore will not be returned to the Bidders. With the exception of proprietary financial information, the submissions will become the property of the Department, and the Department has the right to distribute or use such information as it determines.

G.6 EXAMINATION OF BIDS:

Bidders are expected to examine the requirements of all instructions (including all amendments, addenda, attachments and exhibits) in this IFB. Failure to do so shall be at the sole risk of the Bidder, and may result in disqualification.

G.7 LATE BIDS AND MODIFICATIONS:

- (a) Any bid received by the Department after the exact time specified for receipt shall not be considered.
- (b) The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.
- (c) Notwithstanding any other provisions of this Invitation for Bids to the contrary, a late modification of an otherwise successful bid which makes its terms more favorable to the DGS may be considered at any time it is received and may be accepted.
- (d) Bids shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of bids.

G.8 NO COMPENSATION FOR PREPARATION OF BIDS:

The Department shall not bear or assume any financial obligations or liabilities regarding the preparation of any bids submitted in response to this IFB, or prepared in connection therewith, including, but without limitation, any bids, statements, reports, data, information, materials or other documents or items.

G.9 REJECTION OF BIDS:

The Department reserves the right, in its sole discretion:

- (a) To cancel this solicitation or reject all bids;
- (b) To reject bids that fail to prove the Bidder's responsibility;
- (c) To reject bids that contain conditions and/or contingencies that in the Department's sole judgment, make the bid indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award;
- (d) To waive minor irregularities in any bid provided such waiver does not result in an unfair advantage to any Bidder;
- (e) To take any other action within the applicable Procurement Regulations or law;
- (f) To reject the bid of any Bidder that has submitted a false or misleading statement, affidavit or certification in connection with such bid or this Request for Bids.
- (g) To reject as non-responsive any bid that fails to include a subcontracting plan that is required by law.

G.10 LIMITATION OF AUTHORITY:

Only a person with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this IFB is not effective or binding unless made in writing and signed by the CCO or its authorized representative.

SECTION H INSURANCE REQUIREMENTS

H.1 REQUIRED INSURANCE:

The Contractor shall maintain the following types of insurance throughout the life of the Contract.

H.1.1 Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. The Contractor will be required to maintain this coverage in force for a period of at least two years after substantial completion.

H.1.2 Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

H.1.3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

H.1.4 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Two Million Dollars (\$2,000,000).

H.2 ADDITIONAL INSURED:

Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

H.3 WAIVER OF SUBROGATION:

All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

H.4 STRENGTH OF INSURER:

All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best’s rating of not less than A- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed and approved to do business in the District of Columbia.

SECTION I DEPARTMENT'S RESPONSIBILITIES

I.1 INFORMATION & SERVICES:

I.1.1 The Department will provide full information in a timely manner regarding the requirements of the assignments.

I.2 DEPARTMENT DESIGNATED REPRESENTATIVES:

I.2.1 Chief Contracting Officer (CCO). In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

George G. Lewis, CPPO
Interim Associate Director, Contracts & Procurement
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail: george.lewis@dc.gov

I.2.1.1 Authorized Changes by the Contracting Officer (CO) and the CCO:

I.2.1.1.1 The CCO and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

I.2.1.1.2 The Contractor shall not comply with any order, directive or requests that change or modifies the requirements of this Contract, unless issued in writing and signed by the CCO.

I.2.1.1.3 In the event the Contractor effects any change at the instruction or requests of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

I.2.2 Contracting Officer's Representative (COTR):

I.2.2.1 The COTR is responsible for general administration of the Contract and advising the CCO as to the Contractor's compliance or noncompliance with the Contract. COTR has the responsibility for the day-to-day monitoring and supervision of the Contract to ensure the "work" conforms to the requirements set forth in the Contract and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the Contract. These include:

I.2.2.1.1 Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the Contract;

I.2.2.1.2 Coordinating site entry for Contractor personnel, if applicable;

I.2.2.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;

I.2.2.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and

I.2.2.1.5 Maintaining a file that includes all Contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

I.2.2.1.6 The address and telephone number of the COTR is:

James Wood

Department of General Services

Facility Operations and Maintenance

Reeves Center

2000 14th Street, NW, 5th Floor

Washington, DC 20014

Telephone: (202) 724-4056

E-mail: James.Wood@dc.com

I.2.2.2 The COTR Shall NOT Have the Authority to:

- I.2.2.2.1** Award, agrees to, or sign any Contract document, change order, change directive, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;
- I.2.2.2.2** Grant deviations from or waive any of the terms and conditions of the Contract;
- I.2.2.2.3** Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,
- I.2.2.2.4** Authorize the expenditure of funds by the Contractor;
- I.2.2.2.5** Change the period of performance; or
- I.2.2.2.6** Authorize the use of District property, except as specified under the Contract.
- I.2.2.2.7** The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

I.3 PAYMENTS:

- I.3.1** The Contractor shall submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and include a valid Purchase Order Number.

The Department will no longer accept hardcopy invoice submittals; going forward all invoices must be submitted electronically through the EASI Pay Portal on the Department Website at <https://dgs.onbaseonline.com>.

The following address should be referenced for all Invoices:

Department of General Services
Office of the Chief Financial Officer
2000 14th Street N.W. | 5th Floor
Washington, D.C. 20001

EASI First time users will be prompted to register for Portal access; for assistance with the registration process, technical assistance and or additional information on the EASI Pay Portal, please contact the Portal Help Desk at (301) 563-3025.

- I.3.2** Right to Withhold Payments. The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment, of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:
- I.3.2.1** The work is defective and such defects have not been remedied; or
 - I.3.2.2** The Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
 - I.3.2.3** The Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
 - I.3.2.4** The Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section C of this Contract).
- I.3.3** The Department's liability under this Contract is contingent upon the future availability of appropriated monies with which to make payment under the Contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

SECTION J MISCELLANEOUS PROVISIONS

J.1 EXTENT OF CONTRACT:

The Contract, which includes this Agreement and the exhibits attached hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

J.2 GOVERNING LAW:

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

J.3 ASSIGNMENT:

The Department and Contractor respectively bind themselves, their partners, members, joint ventures, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint ventures, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

J.4 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS:

J.4.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

J.4.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary **submitted to the** Department and the required cost submissions in effect on the date of execution of the Department.

J.4.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of

inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

- J.4.4** The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.
- J.4.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.
- J.4.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- J.4.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

J.5 INSPECTION FOR SUPPLIES AND SERVICES:

- J.5.1** To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.
- J.5.2** Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.
- J.5.3** The Department shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate

any Contractor or offeror with respect to a debarment or suspension of the Contractor or any such Subcontractor.

J.6 LAWS AND REGULATIONS INCORPORATED BY REFERENCE:

All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

J.7 TAX EXEMPTION PROVISION:

Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

J.8 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS:

J.8.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

J.8.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the Contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any

recourse available to it under the law for violations of this anti-kickback provision.

J.8.3 The Contractor represents and warrants that it did not, directly or indirectly; engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

J.9 RESPONSIBILITY FOR AGENTS AND CONTRACTORS:

At all times and during performance under this Contract, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

J.10 ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER EMPLOYEES:

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

J.11 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS:

J.11.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

J.11.2 In the event the Contract is terminated as provided in J.12.1, the Department shall be entitled:

J.11.2.1 To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

J.11.2.2 As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

J.11.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimum.

J.12 COVENANT AGAINST CONTINGENT FEES PROVISIONS:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

J.13 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS:

J.13.1 The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

- J.13.1.1** Employment, upgrading, or transfer;
- J.13.1.2** Recruitment or recruitment advertising;
- J.13.1.3** Demotion, layoff, or termination;
- J.13.1.4** Rates of pay, or other forms of compensation; and
- J.13.1.5** Selection for training and apprenticeship.

J.13.2 Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

J.13.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

J.13.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other Contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

J.13.5 The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

J.13.6 The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

J.13.7 The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

J.14 BUY AMERICAN ACT PROVISION:

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. § 10a), including, but not limited to, the purchase of steel.

J.15 TERMINATION OR SUSPENSION:

J.15.1 Cancellation before Notice to Proceed:

The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Contractor shall not be entitled to any compensation or damages if cancellation occurs.

J.15.2 Termination for Default:

The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

- J.15.2.1** the Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or
- J.15.2.2** the Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
- J.15.2.3** the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, material men, Subcontractors or suppliers when payment is due; or
- J.15.2.4** becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or
- J.15.2.5** the Contractor fails to pay its debts in a timely manner or becomes insolvent or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.
- J.15.2.6** the Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the

termination shall take effect after seven days without further notice or opportunity to cure.

- J.15.2.7** If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

J.15.3 Termination for Convenience:

- J.15.3.1** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.

- J.15.3.2** After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Contractor shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply agreement related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

- J.15.3.3** The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other

similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

J.15.3.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

J.15.3.5 The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs J.17.6.2 and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

J.15.4 Effect of Wrongful Termination:

Any termination for cause, which is later determined to have been improperly affected, shall be deemed to have been a termination for convenience pursuant to Paragraph J.17.3 and shall be governed by that Paragraph.

J.15.5 Continued Responsibility after Termination:

If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

J.16.6 Suspension:

J.16.6.1 Suspension at the Convenience of the Department:

The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as the Department elects by giving the Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such

suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

J.16.6.2 Payment upon Suspension for Convenience.

In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Contractor and the Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

J.16.6.2.1 Additional Costs of the Work, if any, which are incurred by the Contractor, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

J.16.6.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

J.16.6.2.3 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the

Contractor shall not be entitled to an increase in overhead or profit for a suspension ordered by the Department.

J.17 FALSE CLAIMS ACT:

Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

J.18 INTERPRETATION OF CONTRACT:

All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for a Project. If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this Agreement and its Exhibits. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated Contract documents to which it pertains.

J.19 INDEPENDENT CONTRACTOR:

In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all methods, techniques, sequences, and procedures, as well as for Project safety.

J.20 CONFIDENTIAL INFORMATION:

In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

J.21 NO THIRD-PARTY BENEFICIARY RIGHTS:

Nothing in this Agreement shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Agreement.

J.22 MEDIA RELEASES:

Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

J.23 GOODS AND SERVICES:

This Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Agreement.

J.24 NOTICES:

All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopy or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopy, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the Contractor:

George G. Lewis, CPPO

Interim Associate Director, Contracts & Procurement

Department of General Services

2000 14th St, NW – 8th Floor

Washington, DC 20009

This Paragraph shall be read as imposing minimum requirements for distribution of required contractual notices, and not as displacing distribution requirements with respect to periodic reports and other documents.

J.25 LIMITATIONS:

The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

J.26 BINDING EFFECT; ASSIGNMENT:

The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

J.27 SURVIVAL:

All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

J.28 NO WAIVER:

If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be affected only by an express written waiver signed by the Department.

J.29 REMEDIES CUMULATIVE:

Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy, the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded, as conferring, any obligation on the Department to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

J.30 HEADINGS/CAPTIONS:

The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

J.31 ENTIRE AGREEMENT; MODIFICATION:

The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

J.32 SEVERABILITY:

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

J.33 ANTI-DEFICIENCY ACT:

The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

J.34 INDEMNIFICATION:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and Department's consultants, agents, and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

J.35 CHANGES:

J.35.1 Changes Authorized.

The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

J.35.1.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of this Contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the Contracting Officer.

J.35.1.2 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

J.35.2 Executed Change Directive/Order Required.

Changes to the Agreement may be made only by a written Change Directive or Change Order executed by the Department.

J.35.3 Prompt Notice

In the event the Contractor encounters a situation, which the Contractor believes to be a change to this Agreement, the Contractor, shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

J.35.4 Executed Change Orders Final.

The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes

made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

J.35.5 Failure to Agree.

If the Contractor claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

J.36 DISPUTES:

J.36.1 Informal Resolution

It is the mutual desire of the parties to resolve any disputes arising under, or otherwise related to, this Agreement in an informal manner and by consensus. Toward this end, should any such dispute arise, the parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the parties' representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue. If this process cannot resolve the problem, then either party may initiate arbitration in accordance with Section J.37.2 of this Agreement, if resolution is not reached in such manner, the Program Manager shall make a claim in accordance with this Section.

J.36.2 Formal Dispute Resolution Procedure.

J.36.2.1 Notice of Claim

If the Contractor wishes to assert a claim over a Contract dispute, the Contractor shall provide written notice of the claim to the Department pursuant to procedures set forth in Section 4732 of the Department's procurement rules and Section 1004 of the District's Procurement Practices Reform Act of 2010 (PPRA).

J.36.2.2 Contents of Notice of Claim

The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time such notice is provided, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

J.36.2.3 Appeal Procedures

All claims arising under or in connection with the Agreement or its breach, or relating to the delivery of services, whether framed in Contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the Procurement Practices Reform Act of 2010 (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.